

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

WILLIAM KEMPER, et al.)
)
 Plaintiffs,)
)
 v.)
)
 PRIME TANNING CORP., et al.)
)
 Defendants.)
 _____)

Case No. 09CN-CV00333

FILED
MAY 20 2009
MOLLY LIVINGSTON
Clerk of Clinton Co. Circuit Court

**ANSWER OF DEFENDANT RICK REAM TO
PLAINTIFFS' PETITION FOR DAMAGES**

Defendant Rick Ream (hereinafter "this defendant"), by and through his counsel, Scharnhorst Ast & Kennard, P.C., responds to plaintiffs' Petition for Damages by alleging and stating the following. Any factual allegation not specifically admitted is denied.

1. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 1 of plaintiffs' Petition for Damages and, therefore, denies the same.

2. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 2 of plaintiffs' Petition for Damages and, therefore, denies the same.

3. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 3 of plaintiffs' Petition for Damages and, therefore, denies the same.

4. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 4 of plaintiffs' Petition for Damages and, therefore, denies the same.

5. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 5 of plaintiffs' Petition for Damages and, therefore, denies the same.

6. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 6 of plaintiffs' Petition for Damages and, therefore, denies the same.

7. This defendant admits the allegations set forth in Paragraph 7 of plaintiffs' Petition for Damage.

8. This defendant denies the allegations set forth in Paragraph 8 of plaintiffs' Petition for Damage.

9. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 9 of plaintiffs' Petition for Damages and, therefore, denies the same.

10. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 10 of plaintiffs' Petition for Damages and, therefore, denies the same.

11. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 11 of plaintiffs' Petition for Damages and, therefore, denies the same.

12. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 12 of plaintiffs' Petition for Damages and, therefore, denies the same.

13. This defendant denies the allegations set forth in Paragraph 13 of plaintiffs' Petition for Damage.

14. This defendant denies the allegations set forth in Paragraph 14 of plaintiffs' Petition for Damage.

15. This defendant denies the allegations set forth in Paragraph 15 of plaintiffs' Petition for Damage. By further response, this defendant states that he was first employed by Prime, or its predecessor, in November of 1989 at which time the fertilizer application program was already developed and permitted by the State of Missouri.

16. This defendant denies Prime hauled and/or applied "sludge", fertilizer or any other product containing hexavalent chromium to Missouri farms. This defendant admits his employer applied fertilizer at no cost to area farmers. Further, this defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth at Paragraph 16 of plaintiffs' Petition for Damages and, therefore, denies the same.

17. This defendant denies the allegations set forth in Paragraph 17 of plaintiffs' Petition for Damage.

18. This defendant denies that Prime "sludge", fertilizer or any other product contained hexavalent chromium. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth at Paragraph 18 of plaintiffs' Petition for Damages and, therefore, denies the same.

19. This defendant denies that Prime "sludge", fertilizer or any other product contained hexavalent chromium. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth at Paragraph 19 of plaintiffs' Petition for Damages and, therefore, denies the same.

20. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 20 of plaintiffs' Petition for Damages and, therefore, denies the same.

21. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 21 of plaintiffs' Petition for Damages and, therefore, denies the same.

22. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 22 of plaintiffs' Petition for Damages and, therefore, denies the same.

23. This defendant denies the allegations set forth in Paragraph 23 of plaintiffs' Petition for Damage.

COUNT I

24. This defendant incorporates by reference and reasserts his responses to the allegations in all preceding paragraphs.

25. This defendant denies the allegations set forth in Paragraph 25, including all subparts, of plaintiffs' Petition for Damage.

26. This defendant denies the allegations set forth in Paragraph 26 of plaintiffs' Petition for Damage.

COUNT II

27. This defendant incorporates by reference and reasserts his responses to the allegations in all preceding paragraphs.

28. This defendant denies the allegations set forth in Paragraph 28 of plaintiffs' Petition for Damage.

29. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 29 of plaintiffs' Petition for Damages and, therefore, denies the same.

30. This defendant denies the allegations set forth in Paragraph 30, including all subparts, of plaintiffs' Petition for Damage.

31. This defendant denies any allegation the "sludge" was "his" as alleged, and denies the "sludge", fertilizer or any other product produced by his employer contained hexavalent chromium. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth at Paragraph 31 of plaintiffs' Petition for Damages and, therefore, denies the same.

32. This defendant denies any allegation the "sludge" was "his" as alleged, and denies the "sludge", fertilizer or any other product produced by his employer contained hexavalent chromium. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth at Paragraph 32 of plaintiffs' Petition for Damages and, therefore, denies the same.

33. This defendant denies any allegation the "sludge" was "his" as alleged, and denies the "sludge", fertilizer or any other product produced by his employer contained hexavalent chromium. This defendant is without knowledge or information sufficient to form a belief as to

the truth of the remaining allegations set forth at Paragraph 33 of plaintiffs' Petition for Damages and, therefore, denies the same.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Petition for Damages fails to state a claim upon which relief may be granted against this defendant.
2. This defendant denies the existence, nature, extent, and duration of plaintiffs' alleged damages.
3. Plaintiffs' purported claims are barred because, at all relevant times, this defendant acted within the course and scope of his employment and exercised reasonable and ordinary care.
4. Plaintiffs' purported claims are barred because, at all relevant times, this defendant created no dangerous or unsafe conditions on farmland wherein fertilizer was spread.
5. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.
6. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.
7. Any injuries or damages sustained by plaintiffs, which this defendant expressly denies, were directly and proximately caused or contributed to by the negligence or fault of other persons or entities over whom this defendant has no control and for whom he bears no legal responsibility.
8. Any injuries or damages sustained by plaintiffs, which this defendant expressly denies, were not caused or contributed by any negligence or fault on the part of this defendant.
9. The negligence or fault of the parties to this case should be compared by the trier-of-fact, and any negligence or fault apportioned to plaintiffs should act to bar any recovery or

reduce any recovery in direct proportion to any such assessment of fault, all in accordance with the laws of the State of Missouri. Fault shall be apportioned among the parties.

10. The negligence or fault in this case should be apportioned by the trier-of-fact, and this defendant should be held responsible only for such percentage of fault, if any, as is apportioned to him by the trier-of-fact, all in accordance with the provisions of R.S.Mo. § 537.067.

11. Plaintiffs' claims are barred by section 537.764, R.S.Mo so far as the product complied with "state of the art" at the time it was manufactured as defined by law.

12. Plaintiffs' claims for damages are barred in whole or in part by their failure to mitigate their damages.

13. The product of which plaintiffs complain was not defective.

14. If plaintiffs sustained the injuries alleged in the petition, which is denied, there was an intervening, superseding cause or causes leading to the alleged injuries, and therefore, any act or omission on the part of this defendant was not the proximate cause and/or competent producing cause of the alleged injuries.

15. For other and further answer in defense to plaintiffs' Petition for Damages, plaintiffs' claims for punitive damages should be stricken and dismissed in that they violate both the Missouri Constitution and the United States Constitution as follows:

- a. The standards for determining both the amount and/or the subsequent imposition of punitive damages are vague, supply no notice to this defendant of the potential repercussions of his alleged conduct and are subject to the unbridled discretion of the jury, thereby denying due process under the Missouri Constitution, Article I, Section 10.

- b. The standards for determining both the amount and/or the subsequent imposition of punitive damages are vague, supply no notice to this defendant of the repercussions of his alleged conduct and are subject to the unbridled discretion of the jury, thereby denying due process under the Fifth and Fourteenth Amendments of the United States Constitution.
- c. Plaintiffs' claims for punitive damages are criminal in nature and the rights given this defendant in criminal proceedings under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution are applicable.
- d. Plaintiffs' claims for punitive damages are criminal in nature and the rights given this defendant in criminal proceedings under the Missouri Constitution, Article 1, Section 18A, 19, 21, and 22A are applicable.
- e. Plaintiffs' claims for punitive damages constitute a request for and/or imposition of an excessive fine in violation of the Eighth Amendment of the United States Constitution.
- f. Plaintiffs' claims for punitive damages constitute a request for and/or imposition of an excessive fine in violation of the Missouri Constitution, Article 1, Section 21.
- g. Plaintiffs' claims for punitive damages constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.
- h. Plaintiffs' claims for punitive damages constitute cruel and unusual punishment in violation of the Missouri Constitution, Article 1, Section 21.
- i. Plaintiffs' claims for punitive damages discriminate against this defendant and constitute a denial of equal protection under the law in violation of the Fifth and Fourteenth Amendments of the United States Constitution in that defendant's wealth

or net worth may be requested to be considered by the jury in determining the amounts of any such damage awards.

j. Plaintiffs' claims for punitive damages discriminate against this defendant and constitute a denial of equal protection under the law in violation of Article 1, Section 2 and 10 of the Missouri Constitution.

l. Plaintiffs' claims for punitive damages constitute a subsequent imposition of punitive-type damages against this defendant and they cannot protect against multiple punishments for the same alleged conduct or wrong, thereby denying due process under Article 1, Section 2 and 10 of the Missouri Constitution.

m. Missouri Law does not provide an adequate procedure for the determination of damages in the nature of aggravating circumstances or punitive damages in violation of the equal protection and substantive and procedural due process requirements of both the Missouri Constitution and the United States Constitution and in violation of the United States Supreme Court decisions in Pacific Mutual Insurance Company vs. Haslip; BMW of North America, Inc. vs. Gore; State Farm vs. Campbell.

n. The granting of relief requested by plaintiffs would be unconstitutional under the Missouri and the United States constitutions in that it would violate due process and equal protection guarantees, place an undue burden on interstate commerce, and violate constitutional proscriptions against excessive fines.

16. This defendant expressly requests that plaintiffs' claims be reduced pursuant Section 537.060 in the event plaintiffs have previously settled or will settle any of their claims asserted in this lawsuit against any other defendant, any other party (person or entity), any other

JURY DEMAND

Defendant Rick Ream, by and through his counsel, Scharnhorst Ast & Kennard, P.C., hereby demands trial by jury on all issues so triable.



Attorney for Defendant Rick Ream

CERTIFICATE OF SERVICE

I certify that on the 20th day of May, 2009, a true and accurate copy of the foregoing was served on the following counsel of record via United States Mail, postage prepaid:

Thomas P. Cartmell
Brian J. Madden
Thomas L. Wagstaff
WAGSTAFF & CARTMELL LLP
4740 Grand Avenue, suite 300
Kansas City, MO 64112

Thomas V. Girardi
GIRARDI KEESE
1126 Wilshire Blvd
Los Angeles, CA 90017-1904

Stephen Griffin
W. Mitchell Elliott
Troy Dietrich
GRIFFIN DIETRICH ELLIOTT
416 N. Walnut
Cameron, MO 64429

Attorneys for Plaintiffs



Attorney for Defendant Rick Ream